

The 1st/9th July, 1970

No. 5492-ILab-70/1939.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of Municipal Committee, Narwana (Jind).

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 87 of 1970

between

Shri Surta Ram Mate workman and the management of Municipal Committee, Narwana (Jind)

Present :

Nemo, for the workman.

Shri Anoop Chand Garg, for the management.

AWARD

Shri Surta Ram Mate was in the service of the Municipal Committee, Narwana (Jind). His services were terminated and this gave rise to an industrial dispute. Accordingly the Governor of Haryana, by exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal, for adjudication, vide Government Gazette Notification No. ID/11319, dated the 20th April, 1970 :—

"Whether the termination of service of Shri Surta Ram Mate is justified and in order? If not; to what relief is he entitled?"

On receipt of the reference usual notice were issued to the parties by registered post. The service of the workman was personally effected but no body has appeared on his behalf. Shri Anoop Chand, Superintendent of the Committee has appeared on behalf of the respondent Committee. He has produced certified copy of the resolution dated 31st March, 1970 and a copy of the application of the workman and a copy of the order passed by the Executive Officer, according to which the workman has been re-appointed to his old post with effect from 1st June, 1970. According to the application of the workman he has given up his claim for his pay for the period he remained un-employed. Since the workman has been re-appointed and he has given up his claim for pay, he is not entitled to any further relief. I give my award accordingly.

P. N. THUKRAL,
Presiding Officer
Industrial Tribunal, Haryana,
Faridabad.

Dated the 17th June, 1970

No. 986, dated the 18th June, 1970,

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 13 of the Industrial Dispute Act, 1947.

P. N. THUKRAL,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 4th July, 1970

No. 5489-ILab-70/19401.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Printers House (P) Ltd., Ballabgarh.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 43 of 1969

between

THE WORKMEN AND THE MANAGEMENT OF M/S PRINTERS HOUSE (P) LTD.,
BALLABGARH

Present :

Shri Amar Singh, for the workmen.

Shri S. L. Gupta, for the management.

AWARD

Shri Dharam Vir was working as a Fitter in M/s Printers House (P), Ltd., Ballabgarh. His services were terminated and this gave rise to an industrial dispute. Accordingly the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal, for adjudication,—*vide* Government Gazette Notification No. (E.F.D. 210-B) 27562, dated 3rd October, 1969:—

"Whether the termination of services of Shri Dharam Vir was justified and in order? If not to what relief is he entitled?"

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workman and the management filed their written statement. A number of preliminary objections with regard to the validity of the reference and the vires of Section 2A of the Industrial Disputes Act, 1947, were raised on behalf of the management. The representative of the management however made a statement on 1st December, 1969, that he did not wish to press his preliminary objections.

On merits it is pleaded that the claimant was appointed on 6th August, 1958, on probation for a period of six months. The period of probation ended on 5th February, 1969, but his probationary period was extended by another three months. But before the workman could complete the extended period of probation, he met with an accident on 2nd April, 1969 and was on medical leave till 13th June, 1969. According to the management the workman was not considered fit for confirmation and his services were terminated on 12th May, 1969. As already pointed out the workman was on medical leave when his services were terminated. The Factory Inspector wrote to the management pointing out that the services of the workman could not be terminated so long as he was enjoying benefit under the Employees State Insurance Act and was on medical leave. Under the instructions of the Factory Inspector the management recalled their letter terminating the services of the workman. The workman reported for duty on 13th June, 1969, after he was declared fit by the Medical Authority to resume his duty. The management again terminated his services,—*vide* their letter, dated 6th June, 1969. It is pleaded on behalf of the management that it is a simple case of termination of the services of a probationer in accordance with the terms of the contract and the action of the management was therefore fully justified. The pleadings of the parties gave rise to the following issues on merits:—

- (1) Whether the claimant was on probation till 5th May, 1969, and his cast was examined after the expiry of the period of probation and was found unfit?
- (2) Whether the services of the claimant were terminated on 16th June, 1969, on account of the instructions of the Factory Inspector communicated,—*vide* his letter dated 4th June, 1969, that the services of the claimant could not be terminated during the period he was on leave under the provisions of the E.S.I. and so the termination of his services is valid?

The parties have produced evidence in support of their respective contention. I have heard their learned representatives and have carefully considered their submissions. My findings are as under:—

Issue No. 1.—The management have proved the letter of appointment, dated 6th August, 1966 marked Ex. M.W. 1/1 by which the claimant Shri Dharam Vir was appointed as a Fitter. In the letter of appointment it is provided that the workman would be on probation for a period of six months and this period could be further extended at the discretion of the management upto six months. It is further provided that the workman would not be deemed to be confirmed until a letter of confirmation is issued to him. From the point of view of the management the work of Shri Dharam Vir was not found to be satisfactory and therefore no letter confirming him as a Fitter was issued to favour him. This position is correct. I therefore find this issue in favour of the management. However the question as to whether the termination of the services of the workman was justified although he had not been confirmed would be decided in the next issue.

Issue No. 2.—It has been proved that the Factory Inspector wrote a letter, copy Ex. M.W. 1/4 to the respondent-company pointing out that Shri Dharam Vir had met with an accident on 2nd April, 1969 and that he was still on medical leave and therefore his services could not be terminated till he was enjoying benefit in the E.S.I. The management have also proved the letter, dated 4th June, 1969 which they wrote to the workman permitting him to resume duty as soon as he was declared fit. A copy of this letter is Ex. M.W. 1/5. The services of the workman were then terminated on 16th June, 1969,—*vide* the letter copy Ex. M.W. 1/6.

While it is true that the management never considered the workman Shri Dharam Vir fit enough to be confirmed yet this much is also obvious that the management had extended his period of probation only upto 6th May, 1969 and without specifically extending his period of probation further they terminated his services on 16th June, 1969. The submission of the representative of management is that under clause 3(b) of the Certified Standing Orders of the respondent-company, the period of probation is six months in the first instance and it can be extended by a period of three months at a time at the discretion of the management, if it was considered necessary to further judge the work and merits of the workman. This clause 3(b) further lays down that the maximum probation period can in no case extend beyond one year. It is therefore submitted that in accordance with the provisions of the Standing Orders the workman could be kept on probation for a period of one year and during the period of his probation his services could be terminated at any time in accordance with the terms of the letter of appointment and therefor the termination of his services is justified.

I have carefully considered the submissions of the learned representative of the management and in my opinion the termination of the services of the workman was not in accordance with the provisions of para 21A of the Standing Orders. It is true that the workman was still on probation at the time his services were terminated. It is also true that although his period of probation was not specifically extended beyond 6th May, 1969, yet there are number of authorities in support of the proposition that there is no automatic confirmation of a probationer by a mere efflux of time. It is also true that in accordance with the terms of the letter of appointment, copy Ex. M.W. 11 the services of Shri Dharam Vir, workman, could be terminated at any time with or without notice or without assigning any reason therefor during the period of his probation but we find that this condition in the letter of appointment is in conflict with the provisions of the certified Standing Orders of the respondent company. Clause A of para 21 of the certified Standing Orders which makes provisions for discharge or termination of employment reads as under :—

"DISCHARGE AND TERMINATION OF EMPLOYMENT"

- (a) If it becomes necessary to terminate the services of a workman, who is in permanent employment of the Factory or has put in more than 240 days, continuous service in the factory, due to reasons other than misconduct, retrenchment or closure, such as his being declared by the Government a traitor or a dangerous person, subject to provisions of Employees State Insurance Act and the Workmen's Compensation Act, a workman who develops serious defect in eye-sight or hearing or mental deficiency, or becomes disabled or medically unfit for his job, or for any other reason likely to jeopardise the safety or interest of the company, one month's notice in writing or wages in lieu thereof, shall be given to him."

We find that although Shri Dharam Vir, workman, was still a probationer yet he had put in more than 240 days of continuous service in the respondent-factory. He was appointed on 6th August, 1968 and he worked till 2nd April, 1969, when he met with an accident and then proceeded on medical leave. For the purpose of calculating continuous service even of a probationer sub-clause (ii) of clause (b) of para 3 of the certified Standing Orders provides as under :—

"In computing the period of probation the days on which the workman was absent due to authorised leave, sickness, maternity leave, accident, lock-out or a strike (which is not illegal) or temporary closure of the undertaking shall be included".

Section 25(b) of the Industrial Disputes Act, 1947, also makes a provision for counting the continuous service of a workman. It lays down that a workman shall be said to be in continuous service for a period if he is for that period in uninterrupted service including service which may be interrupted on account of sickness or authorised leave or a accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman.

The services of the workman were admittedly terminated on 16th June, 1969, and thus according to the provisions of Standing Orders and section 25(b) of the Industrial Disputes Act, Shri Dharam Vir workman must be considered to have been in continuous service of the respondent-company for a period of more than 20 days although he had actually worked in the respondent-company from 6th August, 1968 to 2nd April, 1969, only and thereafter he was on authorised medical leave on account of accident. If we calculate the period of service of the workman from 6th August, 1968 to 16th June, 1969, we find that the workman had to be in about 315 days of service.

Clause 21 of the certified Standing Orders of the respondent-company which makes a provision for discharge and termination of employment of the workman makes no distinction between a permanent workman and a workman who has put in more than 240 days of continuous service, although he may still be a probationer. In my opinion the management could terminate the services of Shri Dharam Vir, workman, only in accordance with the provisions of the certified Standing Orders and not in accordance with the conditions of appointment as given in the letter of appointment. There is recent authority of the Supreme Court given in the case of Agra Electric Supply Company Ltd., and which is reported in 1969-II-LIJ, page 540. In this case also the employee was taken on probation for the period of six months and his letter of appointment prescribed that even during the period of probation his services could be terminated without notice and without assigning any reason but the relevant Standing Orders of the appellant Electric Supply

Company provided that the service of any employee (which included probationer also) could be terminated only on certain specific ground. In the instant case also we find that the certified standing orders of the respondent company make no distinction between a permanent employees and an employee who has put in more than 240 days of continuous service even if he is still a probationer and has not been confirmed. In my opinion therefore the services of Shri Dharam Vir workman could only be terminated either for an act of mis-conduct as provided in para 19 and 20 of the certified standing orders or for any of the reasons as given in para 21 of the certified standing orders and the services were not liable to be terminated merely because the management did not consider him fit for being made permanent. In the Agra Electric Supply Company case also the workman was ordered to be reinstated and this order was confirmed by the Lordship of Supreme Court. I am therefore of the opinion that Shri Dharam Vir workman is entitled to be reinstated with continuity of service and full back wages. I give my award accordingly.

Dated 18th June, 1970.

P. N. THUKRAL,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1006, dated 20th June, 1970

Forwarded (four copies) to the Secretary, to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 18th June, 1970.

No. 5488-I Lab-70/19403.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workmen and the management of Municipal Committee, Charkhi Dadri :—

**BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.**

Reference No. 94 of 1970

between

**THE WORKMEN AND THE MANAGEMENT OF MUNICIPAL COMMITTEE,
CHARKHI DADRI**

Present :

Shri Sagar Ram Gupta, for the workmen.

Shri K. N. Singla, for the management.

INTERIM AWARD

The Municipal Employees Union, Charkhi Dadri, made a number of demands for the grant of gratuity, uniform, medical aid, fixation of grades, grant of cycle allowance, house rent allowance overtime allowance, grants of weekly rests, exemption of payment of municipal taxes, etc. It was also alleged that the committee had illegally and unjustifiably superseded the senior most Octroi Moharar and promoted Shri Naval Singh a junior Octroi Moharar as Inspector. It was demanded that Shri Manohar Lal, Octroi Moharar be given a chance to work as Octroi Inspector. None of the demands were accepted by the Committee and this gave rise to an industrial dispute. The Governor of Haryana in exercise of the powers conferred on clause (d) of sub-section (1) of Section 10 the Industrial Disputes Act, 1947, referred to this Tribunal only the following to items

of dispute for adjudication,—*vide* Gazette Notification No. ID/14745, dated 18th May, 1970 :—

1. whether the grades and scales of Moharats should be fixed? If so, with what details and from which date?
2. whether the action of the management in giving promotion to Shri Naval Singh ignoring Shri Manohar Lal and others who are senior to him is justified and in order? If not, to what relief are they entitled?

On receipt of the reference usual notices were issued to the parties in response to which the management filed their rejoinder. So far as item No. 2 of the dispute is concerned, it is pleaded that the Municipal Committee,—*vide* its resolution No. 57, dated 9th June, 1970 had resolved that the Committee had no objection if promotion to the post of Octroi Inspector is made according to the seniority of the Octroi Moharars. The workmen have filed the seniority list of the Octroi Moharars according to which Shri Manohar Lal is the senior most. Shri K. N. Singla, Executive Officer of the respondent committee in his statement has admitted that Shri Manohar Lal is the senior most Octroi Moharar. Accordingly by virtue of resolution No. 57, dated 9th June, 1970 of the respondent committee, Shri Manohar Lal is entitled to be appointed as Octroi Inspector. The resolution of the Committee by which Shri Naval Singh was appointed as Octroi Inspector has been superseded by the Committee. Since the Committee has realized its mistake and has remedied the wrong done to Shri Manohar Lal, item No. 2 of the order of reference must be answered in favour of the workmen and it must be held that the action of the Committee in giving promotion to Shri Naval Singh ignoring Shri Manohar Lal who was senior to him was not justified and in order and Shri Manohar Lal is entitled to be promoted and appointed as an Octroi Inspector.

As regards item No. 1 of the order of reference the workmen have still to file their reply to the written statement filed on behalf of the committee. This item would be decided in due course after recording the evidence of the parties and hearing their representatives. I give my interim award accordingly.

P. N. THUKRAL,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 17th June, 1970.

No. 1004, Dated 20th June, 1970

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1970.

P. N. THUKRAL,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 5491-I Lab-70/19406.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Haryana, Faridabad in respect of the dispute between the workman and the management of M/s Rubber House, Jhajjar Road, Bahadurgarh :—

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 92 of 1970
between

SHRI DAYA NAND WORKMAN AND THE MANAGEMENT OF M/S RUBBER HOUSE,
JHAJJAR ROAD, BAHADURGARH

Present :

Shri Rajinder Singh, for the workman.
Shri S. K. Jain, for the management.

AWARD

Shri Daya Nand was in the service of M/s Rubber House, Jhajjar Road, Bahadurgarh. His services were terminated and this gave rise to an industrial dispute. Accordingly the Governor of Haryana in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal, for adjudication,—*vide* Government Gazette Notification No. ID/RK/91-B-69/14213, dated 15th May, 1970.

"Whether the termination of service of Shri Daya Nand was justified and in order. If not to what relief is he entitled?"

On receipt of the reference us al notices were issed to the parties. Shri Rajinder Singh is present on behalf of the workman and Shri S. K. Jain on behalf of the management. A compromise has been effected between the parties and the record of compromise bearing the signatures of the parties and their representative have been filed which is marked Ex. M-1. According to this compromise the workman Shri Daya Nand has been taken back on duty with effect from today, i.e., 8th June, 1970 and it has been agreed that he would be paid Rs. 150 as compensation for the period of his unemployment. The statement of the parties have been recorded and they admit the correctness of this compromise. I give my award accordingly.

P. N. THUKRAL,

Dated the 17th June, 1970.

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

No. 985, dated 18th June, 1970

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 17th June, 1970:—

No. 5490-IIAB-70/19409.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Goodyear India Ltd., Ballabgarh.

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 19 of 1969

between

The Workmen and the management of M/s Goodyear India Ltd., Ballabgarh.

Present :—Shri Khushinder Singh for the workmen.
Shri K.P. Aggarwal, for the management.

AWARD

Shri Lekh Raj was appointed on regular basis in M/s Goodyear India Ltd., Ballabgarh on 8th November, 1967. Before he could be made confirmed, his services were terminated on the ground that his work did not come upto the mark. Sarvshri N.R. Gupta, Hari Singh and Ravi were also in the service of M/s Goodyear India Ltd., Ballabgarh. Shri Gupta was charge sheeted for neglect of work. It is alleged that on 21st August, 1968 he loaded two tyres in C-8 Tyre Press without closing the press correctly as a result of which both the tyres were scrapped. An enquiry was held against him and Shri Gupta was acquitted because on of his witnesses Shri Mohan Singh made a confession that the tyres in question were loaded by him and were damaged on account of his negligence. This confession of Shri Mohan Singh was corroborated by Sarvshri Ravi Kumar and Hari Singh. The management charge-sheeted Shri Mohan Singh on 3rd August, 1968 on the basis of his confession for wilful damaging the tyres and an enquiry was held against him. During the enquiry it transpired that the confession made by Shri Mohan Singh was not correct and he had been induced to make a false confession by Shri N.R. Gupta to save himself and Sarvshri Ravi Kumar and Hari Singh had falsely corroborated his confession. Accordingly Shri Mohan Singh was also acquitted of the charge of wilfully damaging the tyres. Thereafter the management charge-sheeted Sarvshri Ravi Kumar and Hari Singh for giving false testimony on 2nd September, 1968 during the enquiry held against Shri Gupta and were held guilty. Shri Gupta was also charge-sheeted on 7th September, 1968 for inducing Shri Mohan Singh to make a false confession. Shri Gupta was also held guilty of this charge and a punishment of 7

days suspension was imposed upon him. All the three workmen are aggrieved by reason of the punishment given to them. Shri Lekh Raj is aggrieved by reason of the termination of his services and this gave rise to an industrial dispute. The Governor of Haryana in exercise of the powers conferred on him by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following two items of dispute for adjudication to this Tribunal,—*vide* Government Gazette notification No. ID/FD/11426, dated 14th April, 1969 :—

- (1) Whether the suspension of Sarvshri N.R. Gupta, Hari Singh and Ravi Kumar was justified and in order. If not, to what relief are they entitled ?
- (2) Whether the termination of Services of Shri Lekh Raj was justified and in order. If not, to what relief is he entitled ?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workmen concerned and the management filed the written statement. The records of the enquiry held against the three workmen Sarvshri N.R. Gupta, Ravi Kumar and Hari Singh have been filed by the management. The issues which arose from the pleadings of the parties were precisely the same as two item of the dispute referred to this Tribunal for adjudication. The parties were therefore directed to produce evidence in support of their respective contentions.

With regard to the validity of the termination of the services of Shri Lekh Raj, the management have produced Shri J.S. Chawla, Power House Engineer. Shri Chawla has proved the letter of appointment, dated 8th November, 1967 Ex. MW 1/1 issued in favour of Shri Lekh Raj and which bears the signatures of the workmen. The witness has also proved the probationer and evaluator form Ex. MW. 1/2 which shows that the work of Shri Lekh Raj was below average in many respects. So the probationary period of the workmen was extended,—*vide* letter Ex. MW. 1/3. This too bears the signatures of Shri Lekh Raj. His work was again evaluated,—*vide* evaluation form Ex. MW. 1/4 which shows that there was no improvement in his work. Therefore his probationary period was again extended for the period of three months *vide* letter,—Ex. MW 1/5 which bears his signatures at Ex. MW. 1/6. The witness has also proved the position analysis, of the workman Ex. MW. 1/7 which bears his signatures at Ex. MW. 1/8. This witness also evaluated the work of Shri Lekh Raj which is Ex. MW. 1/9. Since the work of Shri Lekh Raj showed no improvement and continued to be below average who was discharged from service. The witness admits in cross examination that before Shri Lekh Raj was taken on regular basis he was working as a casual workman.

In rebuttal Shri Lekh Raj has appeared as his own witness and produced Shri K.C. Kohli Manager, Local Office of the E.S.I. The case of the workman is that he had initially joined the respondent concern in the year 1962 as a casual workman but left the job as he had some work at home and he rejoined in the year 1964 and is working since then continuously and without break. Shri Lekh Raj states that in the year 1964 he was being paid Rs 4 per day and that he was brought on the regular establishment with effect from 8th November, 1967 and was paid wages at the rate of 55 paise per hour, and at the time his services were terminated he was being paid wages at the rate of 60 paise per hour. One workmen states that he was never warned for unsatisfactory work and as regards his signatures on the letters by which his services were extended, the workman explained that his signatures were taken on such letters every month. Shri Kohli, Manager of the Local Office of the E.S.I. has simply proved that Shri Lekh Raj is registered as workman in his office, w.e.f., 17th March, 1966 and since then he is shown to be in continuous employment. The witness has however explained that if the nature of the employment of the workman changes his record would not show this fact and in his record Shri Lekh Raj is still shown as a casual worker.

As regards the three workmen Sarvshri N.R. Gupta, Hari Singh and Ravi Kumar the parties have not produced any evidence. The management rely upon the record of the domestic enquiry only. I have heard the learned representatives of the parties at length and have carefully considered their submissions. My findings are as under :—

I will first take up the case of Shri Lekh Raj workmen which is the subject matter of item No. 2 of the order of reference. The first question which requires decision is whether Shri Lekh Raj was still on probation when his services were terminated. As already pointed this workman was appointed on regular basis as a probationer on 8th November, 1967 *vide* letter of appointment Ex. M.W. 1/1 as a coat and ash handier. Para No. 2 of the letter of appointment provides that the workman would be governed by the rules of the company pertaining to probationary appointment. The expression "probationer" is defined in clause B of para II of the Certified Standing Order of the respondent company as under :

"Probationer" is an employee provisionally employed to fill a permanent vacancy or post and who has not completed six months continuous service in the company. A further extension of 3 months period may be given when deemed necessary by the company."

The definition of the term "probationer" as reproduced above does not contemplate more than one extension of three months in the probationary period of the workman but we find that the management twice extended the probationary period of the workman for three months each time and thus the second extension of the probationary period by three months from 8th August, 1968 to 8th November, 1968 was not in order and further he was discharged from service on 15th October, 1968 before he was allowed to complete the period of his second extension.

It is submitted on behalf of the management that a probationer does not acquire the status of a permanent employee by mere efflux of time. A number of authorities have been cited in support of this proposition. Clause A of the para II of the certified standing orders which defines the term "permanent employee" also lays down that no employee can acquire the status of permanent employee unless he has been in continuous employment of

the company for not less than 6 months and whose employment is confirmed in writing by the Manager or by a person authorised by law in this behalf. It is, therefore, clear that we can not hold that Shri Lekh Raj acquired the status of a "permanent employee" merely by efflux of time.

The contention of the learned representative of the management is that if a workman cannot acquire the status of a permanent employee by mere efflux of time he must be deemed to have continued in service as a probationer and his services can be terminated accordingly. I am afraid that it is not possible to accept this contention.

As already pointed out the term 'probationer' has also been defined in clause B of para II of the Certified Standing Orders and this clause does not contemplate keeping a probationer in service for more than 9 months. The management in this case kept Shri Lekh Raj in service for a period of eleven months and eight days that is from 8th November, 1967 to 15th October, 1968, by specifically extending his period of probation up to 8th November, 1968, which they could not do. It is not possible to ignore the provisions of clause B of para II of the Certified Standing Orders because there are a number of authorities in support of the proposition that if there are certified standing order of a company governing the conditions of service of the workmen they have a statutory force and must be followed. In my opinion there is a clear conflict between the provisions of clause A and Clause B of para II of the certified standing orders. Where as clause A provides that a probation can not acquire the status of a permanent employee unless he is confirmed in writing. Clause B provides that the period of probation can not be extended beyond 9 months. Thus the question which requires determination is what would be the status of an employee who is kept on probation under the express order of the management beyond the period of nine months in direct contravention of the provisions of the certified standing orders. In my opinion such a workman can neither be treated as a probationer nor a permanent employee. Not being a probationer his service can not be terminated merely because the management consider that his work does not come up to their satisfaction.

As regards the relief to which Shri Lekh Raj is entitled I am of the opinion that the management have tried to be rather over indulgent to this workman. Although his work was being evaluated from time to time and it was found that it did not come up to the mark still chances were being given to him to improve his work. If the workman did not improve his work he has simply to thank himself. There is no allegation of mala fides on the part of the management. There is only a technical breach of the rules on their part. Under these circumstances I am of the opinion that it would not be fair to thrust an unsatisfactory workman on the management. It is vaguely stated in the claim statement that the workman has been victimised and his service have been terminated "due to his legal trade union activities" but the workman in his evidence has not even said a word about the alleged victimisation. Therefore there is no reason to doubt the bona fides of the management in terminating his services. However taking into consideration the fact the workman has been in the service of the respondent company from the year 1964. I am of the opinion that compensation of Rs 500 would meet the ends of justice.

I now take up the case of three workmen Sarvshri N.R. Gupta, Hari Singh and Ravi Kumar which is covered by item No. I of the order of reference. Shri Gupta has been suspended from service for 7 days while Sarvshri Hari Singh and Ravi Kumar have been suspended from service for three days each as punishment. The charge against Shri Gupta is that on 31st August, 1968, he along with Shri Khushinder Singh and Nav Rattan Sharma went to the house of Shri Mohan Singh and persuaded him to give false evidence in the enquiry to be held against Shri Gupta on 2nd September, 1968. The charge against Sarvshri Ravi Kumar and Hari Singh is also that they falsely corroborated Shri Mohan Singh and thus they too were guilty. The submission of the learned representative of the management is that knowingly giving false evidence is a misconduct which would fall under clause 15 of para XVI of the Certified Standing Orders because it is an act prejudicial to good conduct and subversive of discipline. In my opinion this submission is not correct. It has been held in 1960-I-LJ-522 that if an evidence given by an employee in an industrial adjudication is disbelieved that itself without any thing more would not constitute misconduct. It is not alleged that Shri Gupta used any threat or force on Shri Mohan Singh, Hari Singh or Ravi Kumar with a view to compel or force them to give false evidence. Hence mere giving of evidence in a domestic enquiry which is not believed to be true cannot be said to a misconduct and it is not possible to uphold the order of the management suspending Shri Gupta for 7 days and Sarvshri Hari Singh and Ravi Kumar for 3 days each from service as a measure of punishment simply because Shri Gupta induced Mohan Singh to give false evidence and Sarvshri Ravi Kumar and Hari Singh falsely corroborated the testimony of Shri Hari Singh. I give my award accordingly. No order as to cost.

P.N. THUKRAL,

Dated 18th June, 1970.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1005, dated Faridabad, the 20th June, 1970

Forwarded (four copies) to the Secretary to Government, Labour & Employment Departments, Haryana, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P.N. THUKRAL,

Dated 18th June, 1970.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.